IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 850 of 2001(A)

OPMV.479/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: PETITIONER

P.K.CHANDRAN, S/O.KOPPUNNY,
PAYYAPPAT HOUSE, P.O. PURANATTUKARA,
THRISSUR DIST.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS:
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1. **MUSTAPHA, S/O.MUHAMMED,**
   KOZHIKKAL HOUSE, THIRRORANGADI,
   MALAPPURAM.

2. **SAIDALI, S/O. ABDUL RAHEMAN,**
   THACHARAMBIL HOUSE, IRINGALLUR,
   PARAPPUR , MALAPPURAM DIST.

3. **UNITED INDIA INSURANCE CO. LTD.,**
   BRANCH OFFICE, MANJERI.

BY ADV. SRI.P.SANKARANKUTTY NAIR - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.850 of 2001

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

The appellant filed a claim petition before the Motor Accidents Claims Tribunal, Trichur contending that the autorickshaw driven by him met with an accident, when the bus driven by the 2nd respondent and insured by the 3rd respondent hit the autorickshaw and that the accident occurred due to the negligence of the bus driver. The tribunal found that the accident occurred due to the negligence of the 2nd respondent bus driver and the bus was duly insured with the 3rd respondent at the time of accident. However, as against a claim of Rs.1,90,000/-, only a sum of Rs.41,000/- was awarded. The quantum of compensation alone is disputed in this appeal filed by the claimant.

2. The appellant was an autorickshaw driver. His professional licence was produced before the tribunal. In fact, the accident occurred while he was driving the autorickshaw on 22.10.1997. Tribunal has taken only

Rs.1,500/- as his monthly income. Even if a conservative estimate is taken, the appellant/claimant would be getting Rs.100/- per day after deducing the fuel expenses etc., and he may get work for 25 days. If that be so, Rs.2,500/- can be taken as his monthly income.

3. He was aged 40 years at the time of accident. Taking guidelines from the second schedule of the act, 15 can be adopted as the multiplier. The doctor who treated him has certified that the claimant has suffered 15% disability. There was fracture of L5 vertebra. The medical certificate reads as follows:

> **"*This is to certify that Mr.Chandran, 44 years, House No.164797 was under treatment from me from 22.10.97 onwards following alleged Road Traffic accident. He had sustained fracture to the pedicle of L5 Vertebra. This was treated conservatively with Bed Rest, Analgesics and spinal support.***
>
> ***Now the fracture has heeled. But he suffers from frequent back pain disabling him fro riding the Autorickshaw (which used to be his job). He has the following disabilities:***
>
> ***(1) Temporary 50% disability for first 3 months.***
> ***(2) Temporary 25% disability for next 3 months.***
> ***(3) Permanent partial disability of 15% due to persistent back pain affecting his vocation."***

4. As per the medical certificate, it can be seen that he is unable to drive his autorickshaw. But permanent disability assessed is only 15%. We, therefore, accept the 15% permanent disability assessed by the doctor. If that be so, the compensation payable can be calculated as follows:

2,500 x 12 x 15 x 15/100 = Rs.67,500/-

The tribunal has, on a rough calculation, granted a sum of Rs.15,000/- towards permanent disability. Since we have awarded Rs.67,500/- as compensation for disability and loss of earning power, the appellant will be entitled to get an additional amount of Rs.52,500/- towards permanent disability and loss of earning power.

5. The tribunal has fixed the monthly income at Rs.1,500/- and has awarded a sum of Rs.4,500/- on account of loss of actual earnings during the period of 3 months, for which the appellant was under treatment. Since we have taken Rs.2,500/- as the monthly income, he will get an additional amount of Rs.3,000/- on that count.

6. Even though it is contended that the amount awarded for pain and suffering, medical reimbursement, loss

of amenities etc. is negligible, considering the total amount that we have awarded, we are not granting any amount on those counts. The appellant is entitled to a total compensation of Rs.55,500/- [Rs.52,500 + 3000], over and above the amount awarded by the tribunal. The amount of Rs.55,500/- shall be deposited by the 3rd respondent insurance company with 7.5% interest from the date of application till the date of deposit. On deposit, the appellant shall be entitled to withdraw the said amount.

Appeal is partly allowed.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

sk/

//true copy//

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.850 of 2001

JUDGMENT

7th August, 2007.